

ADDENDUM NO. 2

STATE OF HAWAII FOREIGN-TRADE ZONE NO. 9

REQUEST FOR PROPOSAL – RFP-FTZ2010-02 March 10, 2010

PROJECT: NETWORK AND DESKTOP SUPPORT FOR THE FOREIGN-TRADE ZONE NO. 9

This Addendum No. 2 responds to questions from the pre-proposal meeting and other submitted questions for RFP-FTZ2010-02. All other terms, provisions, and conditions of the original solicitation, including Addendum 1, shall remain in full force and effect.

1. A similar solicitation to this one was released a few weeks back and then canceled. It is now reissued. Is there a reasoning as to why this solicitation is being re-issued?

Yes, the State decided to cancel solicitation RFP-FTZ2010-01 pursuant to HAR Sections 3-122-95 through 3-133-97 citing budgetary concerns with the bids which were tendered. The FTZ also felt the distribution of the solicitation was not as broad as it should have been and therefore may not have gotten as competitive price as we had hoped.

2. Are your systems under warranty? And if so, when does the warranty expire?

Some of the equipment is under warranty and the time on those warranties vary. A majority of the desktops are less than one year old and covered by the standard Dell warranty with State computers. Most all of the other equipment, however, is less than three (3) years old. We do have two laptops which are older than 3 years. All of our servers, the firewall, the VPN concentrator, UPS systems, switches, PolyCom system, and the remote power boot system are all less than three (3) years old.

3. For hardware which is not under warranty, will we need to factor in the cost of parts?

No, parts will be handled separately and are not part of this solicitation. If a part fails, the selected vendor would make recommendations as to the replacement and the FTZ would be responsible for procuring the part.

4. Because of the sensitive nature of the hardware and software involved and that you are under U.S. Customs and Border Protection regulation, are there requirements for security clearances of any type and would the selected vendor need to pass a background check?

The FTZ would not necessarily require a DOD level security clearance; however, the selected vendor and those working on the account will be required to pass a U.S. Customs Enforcement screening examination through the Department of Homeland Security's E-Verify system before the contract would be awarded.

5. Is there a current vendor who set up and monitor's the system now?

No, the system is currently being monitored internally. The system was installed and configured by Dale Cook in June of 2007.

6. On page 7 of the solicitation you state, "Install, set up and configure a monitoring server," does the FTZ supply the hardware and software and the selected vendor simply install and configure the system and software?

Yes. All hardware and software will be provided by the Foreign-Trade Zone. The selected vendor would be responsible for set up and configuration.

7. In many contracts issued by the State of Hawaii, the awarding company is required to compensate the employees by guidelines in HRS103. Is that the case with this contract as well?

Yes, HRS Section 103-55, Prevailing Wage compliance is required for this contract. Section 103-55 states all contracts in excess of \$25,000 over the life of the contract require the selected vendor to compensate employees working on the contract wages or salaries not less than wages paid to public officers and employees who perform similar work. The Prevailing Wage level for this solicitation is an Information Technology Specialist 5.

The statute also states that the vendor must comply with all labor laws applicable to federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety matters.

If the winning proposer's bid is in excess of \$25,000 over the life of the contract, they will be required to comply with HRS Section 103-55 and will need to provide the FTZ with a Prevailing Wage Certification.

8. Is there any estimation or indication as to how much support is required to fulfill this contract? In other words, is it an “on-call” basis or would we need someone on site at all times?

The FTZ would not require an on-site technician. The system is set up to be monitored remotely. Logs can be reviewed remotely as well. A technician would be required to come on site when there is a system set up or a hardware or software installation, or if a PC were to experience issues where remote access could not remedy the problem.

9. How often is the State adding users and machines to the system?

At this point we are not adding users due to the State’s hiring freeze. The Foreign-Trade Zone purchased seven (7) new computer systems and would like to get them on-line. These new boxes will replace some of the original 16 units currently in use.

There is no special software on them other than Lotus Notes. Everything else is Microsoft products, like Word, Excel, PowerPoint, etc.

There would be a VPN client you would need to install and set up.

10. How long ago did you purchase the 7 Dell desktop systems?

We purchased the new Dells five (5) months ago. We purchased four (4) other Dell systems about a year ago and two (2) others roughly two and a half (2 1/2) years ago. All other systems are older than that.

11. Does the FTZ use any imaging software or any patch management software?

At this point the FTZ does not. Part of this contract would be for the vendor to recommend software or hardware solutions which would help the system run and update more efficiently. The FTZ would then procure the software or hardware and the contractor would be responsible for installing and configuring it.

12. Does the FTZ currently have any spare computer systems which could be used in the event a system goes down?

Yes, the FTZ currently has three (3) to four (4) spare systems which would be available as a replacement in the event an “in-use” system would fail.

13. Is the FTZ required to report to DAGS or other State agencies/departments in relation to your network or connectivity issues? Secondly, are you experiencing any delays when it comes to changes made to things like firewall rule changes, et al.

Yes, we are connected to the State's network system and they approve everything we have done. The State knows and understands all of our network and systems and has approved them for use.

14. Is the FTZ on the State's SONET system?

No. The FTZ is not on SONET. We have our own connectivity and utilize VPNs to connect to the State system. The FTZ currently has three (3) separate WAN connections – two (2) DSL and one (1) T1.

15. Can the FTZ's current equipment support multiple WAN sources today?

The system can support multiple WAN sources; however, due to the limited connectivity choices, the FTZ utilizes only one source at the present time. Also too, the connections are used for different purposes.

16. Does the FTZ have "as-built" documentation for the current set-up?

No. The FTZ currently does not have complete "as-built" documentation for its systems.

17. Was the FTZ planning on having any additional integration work done by the contractor with other entities managing the network?

No, not at this point. If the selected contractor were to make a recommendation which would impact other entities which the FTZ connected with, the FTZ would consult with the other entities first before making any changes to the system.

18. How is the pricing to be done? The proposal is for a firm fixed fee on an annual basis but is it billed monthly?

Yes. The pricing will be on a firm fixed annual, not-to-exceed fee but billed monthly. We are also requesting the hourly rate which was used to develop the proposer's bid.

19. What current version of Nagios are you using?

The FTZ currently uses Nagios version 2.0b3.

ADDENDUM NO. 1

STATE OF HAWAII FOREIGN-TRADE ZONE NO. 9

REQUEST FOR PROPOSAL – RFP-FTZ2010-02

March 4, 2010

PROJECT: NETWORK AND DESKTOP SUPPORT FOR THE FOREIGN-TRADE ZONE NO. 9

This Addendum No. 1 responds to questions stemming from the original solicitation, RFP-FTZ2010-01. It also amends Section 3.01, thereby amending the original solicitation. All other terms, provisions, and conditions of the original solicitation shall remain in full force and effect.

A. Questions:

1. Our company has been in business for over 125 years but under the current name for only 5 years. Is there any way to reflect our past experience?

Yes. The idea behind this solicitation is to show your company's experience and the experience of those who will be working on the account, so you will want to reflect your overall knowledge and skill level in the response to this Request For Proposal.

2. If we base our pricing on an annual project service and it is not an hourly rate, how should we respond to the request for an hourly rate on Offer form OF-2?

Although you are responding on an annual rate, that annual rate would have to have been developed using some base costs or dollar amount which could be converted to an average hourly rate. One alternative could be to break-out the hourly by different types of technicians or managers, if appropriate.

3. Other items of note from the non-mandatory pre-bid meeting:

In order to clear up any potential confusion, please know the Foreign-Trade Zone (FTZ) is a high-security facility which uses a state-of-the art security system. This security system provides certain surveillance services for Pier 2 to other government agencies, so therefore the Foreign-Trade Zone cannot disclose too much information about the system. This is the reason the RFP does not contain a lot of detail about the number and type of equipment used. It is important to know that the security system is a stand-alone system. The proposer is not responsible for the maintenance of the security system in any way, just the traffic which goes to other agencies.

We have another system at the FTZ known as the HFTZIPS system which is comprised of two IBM mini-computers, which the proposer is also not responsible for the maintenance of but would be responsible for the network connectivity for these systems.

Another item to mention is that the Foreign-Trade Zone is considering migrating to a VoIP phone system in the future. This solution will utilize existing data lines, so although the proposer would not be responsible for the maintenance of the VoIP system, they would be responsible for monitoring and maintaining traffic through the existing data lines.

4. We would like to know the specific hardware and software you would like us to maintain. Will the FTZ be able to share that information?

No. That information is confidential and proprietary. It is fair to say that the equipment to be maintained is all name brand, standard equipment. No hardware or software pieces are custom made or built by non-standard manufacturers. Even our anti-virus software cannot be disclosed at this time, but suffice it to say it is a well known manufacturer. If you are qualified to respond to this RFP, you can be assured you have heard of this company.

5. Are your models of your PCs also confidential information?

No, we can share this information. Our PCs are all standard Dell Optiplex systems.

6. In Section 2.03 – 2 “Scope of Work,” please list system “peripherals” make/model and quantities. If printers are categorized under “peripherals,” are they networked or local?

The FTZ cannot share the make/model and quantities of our peripherals but as stated in #4 above, all equipment is name brand, standard equipment.

Printers are categorized under peripherals and the FTZ utilizes both networked and local units.

7. In Section 2.03, "Scope of Work," if hardware is required to remedy any system anomaly, who will provide the hardware?

If additional hardware is required to remedy an issue, the State must review the issue and if the hardware is deemed necessary, it must acquire it through the State Procurement system.

8. Do you have any manufacturer or other warranty on your equipment?

Some of the equipment is under warranty. A majority of the desktops are less than one-year old and covered by the standard Dell warranty with State computers. Most all of the other equipment, however, is less than three (3) years old. We do have two laptops which are older than 3 years. All of our servers, the firewall, the VPN concentrator, UPS systems, switches, PolyCom system, and the remote power boot system are all less than three (3) years old.

9. Please provide current maintenance contracts along with current licensing and expiration dates for all devices to be covered under the maintenance contract.

Because of the secure nature of the Foreign-Trade Zone's systems and equipment, we will not divulge that information at this time. The winning proposer will be provided with that information when the contract for services has been executed.

10. What about quantities of the systems, such as switches, the winning bidder has to manage. Can we find out how many of each we will be servicing?

No. But we can say there are less than five switches. The system we have is not big. We can say there are 16 desktop systems which you will be managing at this time.

11. With the response time, will that be divided such as an SLA so there would be different response times given the piece of equipment involved instead of one response time for every item?

The Foreign-Trade Zone is requesting a 24 hour response time for desktop systems and a 4 hour response time for all other issues.

12. Shall the contractor include “on-site” resources to be available on a part-time basis? If so, please provide an estimated amount of hours required on-site per week for this resource.

No. The FTZ is not requiring a set number of hours per week for the contractor to be “on-site” as a resource. The contractor however, may need to be on-site when deemed necessary to successfully perform the contracted service.

13. What other items of service is important to the FTZ?

The monitoring of traffic is important along with monitoring logs. The system to do this has already been set up and is running fine. The crux of what the selected vendor will be doing is ensuring it stays operational. We also want to ensure if we were to add new users, the selected vendor would add the individual to the system for us.

This project is not a “reconfiguration” or “reset” of anything unless the selected vendor believes it is warranted and the FTZ management decides to move forward with the recommendation. The FTZ’s goal to ensure the system remains running at the most efficient level.

Remote monitoring is important as this system runs 24/7. We have three separate data lines which come into our computer room and up-time is important as we have customers who rely on connecting with our server 24/7. Remote monitoring is already in place for this system.

14. In Section 5.29 you reference “Subcontracting.” If a subcontractor is currently approved on an existing State contract, will they be able to provide services according to this bid?

Yes, however, as stated in Section 5.29, the subcontractor must be approved by the State (FTZ) before they are allowed to provide services.

15. In the solicitation you mention disaster recovery and back-ups. Is the monitoring and recovery of these incidents something the vendor will need to be involved in as well?

This service will be for the monitoring of the system and alerting the Foreign-Trade Zone only when there is an issue.

16. The RFP contains language which states “offer recommendations.” As part of the bid response, should we build out pricing for just the recommendations/consultative service or for the recommendations and the implementation of the recommendations?

The FTZ would like the bid response for both the consultative service and the implementation/installation of that recommendation but the vendor would not be responsible for the cost of the hardware or software involved with the recommendation. Any necessary hardware or software would be purchased separately through the State procurement system by the Foreign-Trade Zone.

17. Is the system currently being maintained by anyone?

The system is currently being maintained in-house by FTZ personnel.

18. How was the current equipment and software procured?

The current hardware and software was procured through the State procurement process, however, a portion of the monies used for these systems was through a federal grant.

19. In Section 2.03 – 13 “Scope of Work,” please expand on the description of “probes” (in the computer room). Are these probes IP-based and able to send SNMP traps?

Again, because of the security issues involved, we cannot share this information at this time.

20. Will the contractor have Remote Access to desktops? Is current Remote Access software available on the desktops? If so, please provide current application name, software level and availability per desktop/laptop.

The contractor can have remote access to desktops via Microsoft products.

21. What types of system administration applications are currently being used?

There are no other system administration applications outside of those listed in the RFP.

22. What are the established standards and guidelines mentioned in the Scope of Work?

The standards and guideline mentioned under the Scope of Work refer to established industry manufacturer's standards and guidelines for optimum performance of hardware, software, and systems.

23. Does the support include agency wide refreshes of hardware/software?

The proposer would be responsible for performing software and firmware updates and upgrades to the Foreign-Trade Zone systems and hardware such as flash updates to routers, service pack updates to desktops systems or other services to ensure all hardware and software is up to date.

24. Are plans in place to migrate to Windows 7 and/or other current technologies? Are there any upgrades/migrations that are expected to take place during the contract period? If so, please describe.

There are no plans at the present time but upgrades to the latest OS is highly likely during the contract period.

25. What types of backend systems are used by the agency?

Again, because of the confidential nature of the systems at the Foreign-Trade Zone, that information will not be disclosed in this RFP.

26. Are agency systems accessed only by internal users? If not, please describe the nature of the external users (i.e., State/County/Federal agencies, commercial, banks, etc.) and how connectivity is established?

The FTZ's systems are accessed by inside and outside users. Zone customers can access their accounts and data is also supplied to both state and federal organizations. Due to the confidential nature of the system, the FTZ cannot disclose the nature or how connectivity is established. Again, the hardware and software used are all standard, name-brand equipment. Nothing has been modified or specially designed for this purpose.

27. Can network diagrams be available for review by potential Offerors?

No. Again, because of the sensitive nature of the security system, this information must remain confidential and proprietary.

28. Does the FTZ network reside on the state's NGN or any other government managed network?

No, it does not.

29. What type of domain services (including version) are being used?

This information is confidential.

30. Is FTZ required to meet any security related compliance (i.e., Federal, IRS, SOX, HIPAA, etc)? If compliance is required, what is the agency's status regarding compliance?

This information is confidential.

31. Is the video conferencing system integrated with ICSD's video conferencing system? If not, are there plans to integrate the system in the future?

No, the FTZ's video conferencing system is not integrated with the State ICSD's system and there are no plans at the present time to integrate the two systems.

32. Are the DBEDT Intranet and HFTZIPS integrated with each other? If so, how?

No.

33. Has the MRTG system already been purchased? If not, has a solution been selected?

No, the MRTG has not been purchased however, it has been selected.

34. In section 5.01, the scope is identified as "The furnishing of Network and Desktop system support." Is there a reason why other areas such as servers and peripherals are not mentioned?

When the FTZ refers to the network, it is referring to the entire system which would include servers and related peripherals.

35. In Section 2, “The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp on the certificate.” Presently, the State of Hawaii provides updated, certified copies online through the Tax Clearance System. Is a hardcopy copy from this system sufficient?

**A certified copy of the vendor’s tax clearance with the original green stamp is required; however, the vendor may also show compliancy by providing a copy of the Certificate of Vendor Compliance from the State of Hawaii’s Compliance Express system. The Hawaii Compliance Express system can be accessed through:
<https://vendors.ehawaii.gov/hce/splash/welcome.html>**

- B.** Section 3.01, “Introduction,” is amended with the following included in this section:

- “f. **Response Time** for Trouble Calls from the time the proposer is alerted to an issue with the network or systems to the time the proposer is actively remedying the issue is 24 hours for desktop systems and 4 hours for network related problems.”



**REQUEST FOR PROPOSALS
No. RFP-FTZ2010-02**

**SEALED OFFERS
FOR
NETWORK AND DESKTOP SYSTEM SUPPORT FOR
THE FOREIGN-TRADE ZONE NO. 9**

**WILL BE RECEIVED UP TO 11:00 A.M. (HST) ON
March 29, 2010**

IN THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM (DBEDT), FOREIGN-TRADE ZONE NO. 9 BUSINESS OFFICE, 521 ALA MOANA BOULEVARD, SUITE 101, HONOLULU, HAWAII, 96813. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO DAVID SIKKINK, TELEPHONE (808) 586-2510, FACSIMILE (808) 586-2513, OR E-MAIL AT BIDS@FTZ9.ORG.

DOWNLOAD SOLICITATION from Website

Offeror is advised that if interested in responding to this solicitation, Offeror may choose to submit their offer from a downloaded document **provided** Offeror registers its company by fax or e-mail for this specific solicitation. If Offeror does not register its company, Offeror will not receive addenda, if any, and their offer may be rejected and not considered for award.

Registration or Request for Copy of Solicitation

Submit FAX or E-Mail to:

FAX No.: (808) 586-2513

E-Mail Address: bids@FTZ9.org

Provide the following information:

- | | |
|--|-----------------------|
| ⊕ Name of Company | ⊕ Mailing Address |
| ⊕ Name of Contact Person | ⊕ Telephone Number |
| ⊕ Facsimile Number | ⊕ Solicitation Number |
| ⊕ E-mail Address, if available | |
| ⊕ FedEx (or equivalent) account number (document will be sent by U.S. Postal Service first class mail if this is not provided) | |

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SECTION ONE

INTRODUCTION AND KEY DATES

1.01 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION

Foreign-Trade Zone Business Office	=	Foreign-Trade Zone No. 9 (FTZ) Business Office, and the entity for which this solicitation is issued. Located at 521 Ala Moana Boulevard, Suite 101, Honolulu, HI 96813
Contact Person	=	Official Contact Person, as identified in Section 5.06, Special Provision, of this RFP
Contractor	=	The Offeror awarded a Contract under this RFP
CPO	=	Chief Procurement Officer
State	=	State of Hawaii, including each department and political subdivision
Procurement Officer	=	The State of Hawaii Department of Business, Economic Development, and Tourism, Director or Director's delegated Procurement Officer.
BAFO	=	Best and Final Offer
DBEDT	=	Department of Business, Economic Development, and Tourism
FTZ	=	Hawaii Foreign-Trade Zone No. 9
HAR	=	Hawaii Administrative Rules
HRS	=	Hawaii Revised Statutes
RFP	=	Request for Proposal
GC	=	General Conditions, AG-008
GET	=	General Excise Tax
Offeror	=	Any individual, partnership, firm, corporation, joint venture, or representative or agent, submitting an offer in response to this solicitation.

1.02 INTRODUCTION

Pursuant to the Hawaii Public Procurement Code, Chapter 103D, Hawaii Revised Statutes, the State of Hawaii Department of Business, Economic Development, and Tourism (DBEDT), Foreign-Trade Zone No. 9 (FTZ) is soliciting proposals for Network and Desktop Support.

This solicitation encompasses support services related to the monitoring, maintenance and troubleshooting of the Hawaii Foreign-Trade Zone's local area network (LAN), servers, peripherals, desktop and laptop computer systems and software.

1.03 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule set out herein represents the State's best estimate of the schedule that will be followed. All times indicated is Hawaii Standard Time (HST). If a component of this schedule, such as "Proposal Due" date is delayed, the rest of the schedule will likely be shifted by the same number of days. The approximate schedule is as follows:

Advertising of Request for Proposals	February 25, 2010
Pre-Proposal Conference Meeting Non-Mandatory	Thursday, March 4, 2010 at 10:00 AM, Foreign-Trade Zone Building, Room 202, 521 Ala Moana Blvd, Pier 2, Honolulu, Hawaii
Deadline to Submit Written Questions	Monday, March 8, 2010, 3:00 PM, HST
State's Response to Written Questions	Wednesday, March 10, 2010, 4:00 PM, HST
Proposals Due and Opened	Monday, March 29, 2010, 11:00 AM, HST
Proposal Evaluations	On or before April 16, 2010
Discussion with Priority Listed Offerors (if necessary)	To be scheduled
Best and Final Offer (if necessary)	To be scheduled
Contract Start Date	As determined by the Notice to Proceed

SECTION TWO BACKGROUND AND SCOPE OF WORK

2.01 OVERVIEW

The CONTRACTOR will be responsible for ensuring the Foreign-Trade Zone No. 9, Pier 2 facility computer system and network systems are maintained and operational while keeping downtime to a minimum. This service involves the monitoring, maintaining and troubleshooting of all issues relating to the Foreign-Trade Zone No. 9's desktop/laptop computer systems, peripherals, system software, computer network systems, and server systems. The monitoring system has already been implemented so a majority of this service is to simply monitor and update the network and systems as necessary.

2.02 OBJECTIVE

The objective of this project is to provide on-going monitoring, maintenance, and troubleshooting for all computer/laptop, peripheral, and administration of data network systems at the Foreign-Trade Zone No. 9, Pier 2 facility. This includes all hardware and software associated with these systems which are critical to the day-to-day activity at the Pier 2 facility.

2.03 SCOPE OF WORK

1. Maintain Foreign-Trade Zone (FTZ) desktop/laptop system software and hardware, ensuring the systems are operating properly within established standards and guidelines. Perform all necessary installations, configuration and testing of computer hardware and software.
Computer systems consist of:
 - a. Sixteen (16) PC desktop systems currently running Windows XP; and
 - b. Two (2) PC Laptop systems currently running Windows XP.
2. Troubleshoot and resolve hardware, software and operating system issues relating to desktop systems, servers, peripherals and network systems.
3. Offer recommendations for new system upgrades, network services, and other technology to help the Foreign-Trade Zone run more efficiently.
4. Provide system maintenance and connectivity support to the Foreign-Trade Zone's specialized security system located at the Pier 2 facility.
5. Maintain FTZ systems with the latest anti-virus/malware updates and definitions.
6. Provide on-going maintenance of the FTZ local area network with necessary system modifications, enhancements, and software updates.
7. Configure and maintain Foreign-Trade Zone Virtual Private Network (VPN).

8. Provide maintenance for file, print, Domain Name Server (DNS), security and backup network servers.
9. Provide support and maintenance for Local Area Network (LAN) equipment including network router, firewall, VPN concentrator, managed switches, servers, Polycom Video Conferencing System and remote power boot system.
10. Check router, VPN and other network logs on a daily basis and provide a monthly report.
11. Offer LAN connectivity support to the DBEDT Intranet and Hawaii Foreign-Trade Zone Information Processing System (HFTZIPS).
12. Install, set up and configure a systems monitoring server to using software such as Multi Router Traffic Grapher (MRTG) to monitor network traffic and bandwidth.
13. Install and maintain network monitoring software which will watch all hosts and services, and provide alerts when hosts and services malfunction and/or begin operating normally again. Features shall include:
 - Monitoring of network services (e.g. File Transfer Protocol (FTP), Secure Shell (SSH))
 - Monitoring of host resources (processor load, disk usage, system logs)
 - Monitoring of probes (temperature, humidity, alarms) in the computer room
 - Remote monitoring supported through SSH or Secure Sockets Layer (SSL) encrypted tunnels
 - Ability to define network host hierarchy using "parent" hosts, allowing detection of and distinction between hosts that are down and those that are unreachable
 - Contact notifications when service or host problems occur and get resolved (via e-mail, pager, Short Message Service (SMS), or any user-defined method through plugin system)
 - Web-interface for viewing current network status, notifications, problem history, log files, etc.
 - Ability to define event handlers to be run during service or host events for proactive problem resolution
 - Automatic log file rotation; and
 - Support for implementing redundant monitoring hosts.

2.04 TIMELINE FOR SERVICES

Services to be provided by the CONTRACTOR secured through this proposal shall be as follows, but may be amended, through mutual agreement:

The term of the Contract is for twelve (12) months unless sooner terminated or extended as thereafter provided.

The Contract may be extended without the necessity of re-soliciting proposals, for one (1) or two (2) additional twelve (12)-month periods. Any extension(s) shall be mutually agreed upon in writing at least thirty (30) days prior to expiration, provided the Contract price remains the same or lower than the initial price bid, except for any allowable increase related to increased wages of public employees performing similar work.

2.05 PROPOSED PAYMENT SCHEDULE

1. Award shall be made based on the evaluation criteria herein to include a firm, fixed fee. Notwithstanding that, the Offeror shall submit a budget with his or her proposal with an hourly rate and a total not-to-exceed amount for services to be rendered under this solicitation.
2. Payment to the CONTRACTOR shall be made only upon presentation of an original invoice submitted by the CONTRACTOR and in accordance with the predetermined progress payments contingent on STATE's approval of specified deliverables. Invoices shall be submitted within twenty (20) working days following the month in which the services were provided.
3. Proposals shall be priced and shall include a budget in accordance with this section and the section entitled "Proposal Requirements."
4. The Awardee shall be required to obtain a current tax clearance from the State of Hawaii Department of Taxation and the Internal Revenue Service prior to entering into a Contract with the STATE and again to receive a final payment.
5. If any work is not in full compliance with these specifications, the CONTRACTOR shall make all necessary corrections to the full satisfaction of the STATE and at no additional cost to the STATE. The CONTRACTOR shall perform corrective work within the period allowed by the Officer-In-Charge.

2.06 SPECIAL CONDITIONS

1. All work must comply with all applicable State, County, and Federal regulations, codes, and guidelines.
2. All work and products developed shall conform to all applicable City, County, State, and Federal rules and regulations.
3. The CONTRACTOR must assure and be responsible for the continuity of service/activities in the event of staff illness, medical emergencies, vacancies, or other situations which result in program resources that are less than proposed and contracted for. The CONTRACTOR must not require or depend on the STATE's staff to provide services/activities in the event that program resources are not available due to the above situations.
4. When a disagreement arises between the CONTRACTOR and the STATE in regards to the performance of specific service requirements within the Contract specifications, the wishes of the STATE shall prevail. Failure on the part of the

CONTRACTOR to comply shall be deemed cause for corrective action and subject to contractual remedies.

5. The STATE reserves the right to reduce, amend, or expand the “Scope of Services.”

2.07 OFFEROR EXPERIENCE AND CAPABILITIES

Offerors should document, demonstrate, and/or describe in detail how they meet the desired qualifications including the scope of their work experience. Offerors will be awarded less than the maximum number of points for experience if they fail to meet the following desired qualifications.

1. Minimum five years experience LAN network management with a broad range of knowledge networking products and tools and applied network management concepts relating to the installation, configuration and troubleshooting of Transmission Control Protocol/Internet Protocol (TCP/IP) protocols and related applications, CISCO routers and network switches, CISCO Virtual Private Network (VPN) concentrators, firewall configuration, Polycom systems, and DNS, file, print, and security system servers. Experience with Nagios network monitoring software, enterprise wide backup systems configuration and administration, disaster recovery administration and documentation, wireless network equipment and configuration, network utilization monitoring and reporting.
2. Minimum five years experience desktop support services working with MicroSoft (MS) Windows 2000/XP Professional/2003, MS Office Suite, antivirus software, malware software installation and configuration, configuration and administration of VPNs, configuration and administration of FTP, SSH and SSLs, file system permissions, software and application installation and upgrade paths.

SECTION THREE

PROPOSAL FORMAT AND CONTENT

3.01 INTRODUCTION

One of the objectives of the RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals.

When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the task described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP. There is no intention to limit the content of a proposal, and an Offeror may include additional information if so desired.

The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of the RFP as stated in **Section 2.03 Scope of Work**.

Offeror's proposal must:

1. Include a transmittal letter to confirm that the Offeror shall comply with the requirements, provisions, terms, and conditions specified in this RFP, **Section 6**;
2. Include a properly signed and executed Offer Form page OF-1 (Attachment 1); and
3. Provide all of the information requested in the RFP as listed below:
 - a. Include all of Section 6.
 1. Identify the title and number of this RFP.
 2. Include the complete name of the Offeror's firm and its address.
 3. Include the name, mailing address, telephone number, and facsimile number of the person the STATE should contact regarding Offeror's proposal.
 4. Include State of Hawaii GET License Number and Federal Taxpayer Identification Number.
 5. Include Type of Organization.
 6. Include Preferences.
 7. Include Qualification Questions.

8. Include Corporate Resolution.
9. Identify the name(s) of any subcontractor Offeror proposes to use.
- b. **Proposal** including an overall strategy. Proposal should include a work and task plan for successfully completing the project including an overall strategy as well as expected results and possible shortfalls.
- c. **Experience and Capabilities.**
 1. Document and describe in detail how Offeror meets experience and capabilities listed in **Section 2.07, Offeror Experience and Capabilities**. Include the identification of the Project Manager and/or principal contact with DBEDT if selected for this project. Include a brief resume and project management experience.
 2. A representative listing of projects of a similar nature on which the firm has been engaged. Please highlight any previous work conducted for the State of Hawaii.
 3. Reference information from persons for whom the Offeror has successfully provided similar services within the past three (3) years, including the name, titles, organizations, telephone numbers, email and postal addresses of a contact person for each reference, and a brief outline of the nature of the services and deliverables provided.
 4. Provide a summary listing of judgments or pending lawsuits or actions against adverse Contract actions, including termination(s), suspension, imposition of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations against your firm. If none, so state.
- d. **Cost** for services to be performed as listed under Section 2.03, Scope of Work. Please provide a breakdown of cost by task. See Section Seven, Attachment 2, Offer Form OF-2.
- e. **Estimated Timeline** to complete project by task.

The sections are primarily designed to provide information necessary for the STATE to evaluate offers pursuant to Section Four – Evaluation Criteria of this RFP. Offeror is advised to review the section and to provide all information necessary to allow the STATE to evaluate its proposal based on the stated criteria.

3.02 EXCEPTIONS

Offeror shall list any exceptions taken to the terms, conditions, specifications, or other requirements listed herein. Offeror shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any.

SECTION FOUR

EVALUATION CRITERIA

Evaluation criteria and the associated points are listed below. The award will be made to the responsive, responsible Offeror whose proposal is determined to be acceptable to the STATE based on evaluation criteria listed in this section.

The total number of points used to score the proposals is 100.

1. Cost of Services. **(60 points)**
 - a. Demonstrated ability to meet project objectives within budget.
 - b. Offeror's resources that are being offered as in-kind/cost sharing to support the proposed activities as percent of total project cost.
2. Project skills, capability, previous experience and past performance of individuals involved on similar projects including client satisfaction ratings determined by contact with references submitted. Include number of years in the business and number of years performing services specified in this RFP. **(20 points)**
3. Previous company wide experience with similar government contracts with contract details and applicable hardware, software and network systems maintained. Include number of years in the business and number of years performing services specified in this RFP. **(20 points)**

SECTION FIVE

SPECIAL PROVISIONS

5.01 SCOPE

The furnishing of Network and Desktop system support for the Foreign-Trade Zone Division shall be in accordance with this RFP, including the special provisions in this section, the Scope of Work specified herein, and the STATE's General Conditions.

A copy of this RFP may be obtained at the Foreign-Trade Zone Business Offices, 521 Ala Moana Boulevard, Suite 101, Honolulu, Hawaii, 96813. Request for Proposal (RFP) documents may be obtained from said office between the hours of 8:00 a.m. to 3:30 p.m., Monday through Friday, except for State holidays, or you may download a copy from www4.hawaii.gov/bidapps. All interested parties must register with said office at the time the RFP documents are requested. **PLEASE NOTE: REGISTRATION IS MANDATORY TO RECEIVE ADDENDUM.**

Proposals must be submitted on DBEDT proposal forms **with an original signature.** If possible, blue ink is preferred.

5.02 RESPONSIBILITY OF OFFERORS

Offeror is advised that prior to award of a Contract under this solicitation, Offeror shall furnish proof of compliance with the requirements of section 103D-310(c), HRS:

- a. Chapter 237, tax clearance;
 - b. Chapter 383, unemployment insurance;
 - c. Chapter 386, workers' compensation;
 - d. Chapter 392, temporary disability insurance;
 - e. Chapter 393, prepaid health care; and
 - f. Section 103D-310 (c), Certificate of Good Standing (COGS), for entities doing business in the State.
1. **Hawaii Compliance Express.** An Offeror may collectively apply for these certificates through the Hawaii Compliance Express (HCE). The HCE allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov/hce/splash/welcome.html> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance," indicating that the vendor's status is compliant with the requirements of HRS Section 103D-310(c), shall be accepted for both contracting purposes and final payment. Vendors that elect to use the new HCE services will be required to pay an annual fee of \$12.00 to the Hawaii Information Consortium, LLC (HIC). **Vendors choosing not to**

participate in the HCE program will be required to provide the paper certificates as instructed in sub-sections 2, 3, 4 that follow.

2. **HRS Chapter 237 tax clearance requirement for award.** Instructions are as follows:

Pursuant to HRS §103D-328, the successful Offeror shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate. It must be valid on the date it is received by DBEDT/Foreign-Trade Zone No. 9 Business Office.

The tax clearance certificate shall be obtained on DOTAX “Tax Clearance Application” Form A-6 (Rev. 2006), which is available at the DOTAX and IRS offices in the State of Hawaii or the DOTAX website, and by mail or fax:

DOTAX Website, Forms & Information: http://www.state.hi.us/tax/a1_1alphalist.htm
DOTAX Forms by Fax/Mail: (808) 587-7572
1 (800) 222-7572

Completed tax clearance applications may be mailed, faxed, or submitted in person to the DOTAX, Taxpayer Services Branch, to the address listed on the application. Facsimile numbers are:

DOTAX: (808) 587-1488
IRS: (808) 539-1573

The application for the clearance is the responsibility of the Offeror, and must be submitted directly to the DOTAX or IRS and not to DBEDT/Foreign-Trade Zone No. 9 Business Office. However, the tax clearance certificate shall be submitted to DBEDT/Foreign-Trade Zone No. 9 Business Office.

3. **HRS Chapters 383 (Unemployment Insurance), 386 (Workers’ Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements for award.** Instructions are as follows:

Pursuant to HRS §103D-310(c), the successful Offeror shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue and must be valid on the date it is received by DBEDT/Foreign-Trade Zone No. 9 Business Office. A photocopy of the certificate is acceptable to DBEDT/Foreign-Trade Zone No. 9 Business Office.

The certificate of compliance shall be obtained on the State of Hawaii, DLIR *APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH HAR SECTION 3-122-112*, “Form LIR#27 which is available at <http://hawaii.gov/labor/forms/DCD-LIR27.pdf>, or at the Neighbor Island DLIR District Offices. The DLIR will return the form to the Offeror who in turn shall submit it to DBEDT/Foreign-Trade Zone No. 9 Business Office.

The application for the certificate is the responsibility of the Offeror, and must be submitted directly to the DLIR and not to DBEDT/Foreign-Trade Zone No. 9 Business Office. However, the certificate shall be submitted to DBEDT/Foreign-Trade Zone No. 9 Business Office.

4. **Compliance with Sections 103D-310 (c), HRS for an entity doing business in the State.** The successful Offeror shall be required to submit a CERTIFICATE OF GOOD STANDING (Certificate) issued by the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division (BREG). The Certificate is valid for six months from date of issue and must be valid on the date it is received by DBEDT/Foreign-Trade Zone No. 9 Business Office. A photocopy of the Certificate is acceptable to DBEDT/Foreign-Trade Zone No. 9 Business Office.

To obtain the Certificate, the Offeror must first be registered with BREG. A sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit the certificate.

Online business registration and the Certificate are available at www.BusinessRegistrations.com. To register or to obtain a “Certificate of Good Standing” by phone, call (808) 586-2727 (Monday-Friday, 7:45 a.m. to 4:30 p.m., HST). Offerors are advised that there are costs associated with registering and obtaining the Certificate.

5. **Final Payment Requirements.** CONTRACTOR is required to submit a tax clearance certificate for final payment on the Contract. A tax clearance certificate, not over two months old, with an original, green certified copy stamp must accompany the invoice for final payment on the Contract.

In addition to a tax clearance certificate, an original “Certification of Compliance for Final Payment” (SPO Form-22), Attachment 3, will be required for final payment. A copy of the Form is also available at www.spo.hawaii.gov. Select “Forms for Vendors/Contractors” menu. Alternatively, a “Certificate of Vendor Compliance”, issued through the Hawaii Compliance Express system, shall be acceptable for final payment requirements.

6. **Timely Submission of all Certificates.** The above certificates should be applied for and submitted to DBEDT/Foreign-Trade Zone No. 9 Business Office as soon as possible. If a valid certificate is not submitted on a timely basis for award of a Contract, an offer otherwise responsive and responsible may not receive the award.

5.03 PREFERENCES

The following preferences shall apply to this solicitation. The evaluated price shall be based on application of these preferences in the order specified below:

1. In-State Contractor. Preference shall be given to Offerors within the State of Hawaii. Whenever an Offeror selects and qualifies for an in-state contractor preference, all prices from Offerors who do not select or qualify under the in-state contractor preference shall be increased by 5% for evaluation purposes. Offerors claiming this preference shall submit a tax clearance certified from the State of Hawaii, Department of Taxation with their proposal and must indicate a State of Hawaii business address.
2. Tax adjustment for tax exempt bidders. Where the Offeror is exempted from paying the applicable general excise tax and applicable use tax, the proposal price, shall be increased by the applicable retail rate of general excise tax and the applicable use tax. The Contract amount of any Contract awarded shall be the amount of the proposal price and shall not include the amount of the increase.
3. Reciprocal Preference. Resident Offerors of the State of Hawaii may be given a reciprocal preference equal to the preference that an out-of-state Offeror would be given in their own state. If the out-of-state Offeror's state has a preference comparable to a Hawaii preference, the reciprocal preference shall be equal to the amount the out-of-state preference exceeds the Hawaii preference.

5.04 OFFEROR QUALIFICATIONS

Offeror shall meet all of the qualifications required by this RFP. Failure to meet the qualifications as specified in Section 2.07, Offeror Experience and Capabilities, will likely have an adverse affect on Offeror's proposal evaluation.

5.05 TERM OF CONTRACT

Successful Offeror shall be required to enter into a formal written Contract to commence work on this project.

The initial term of the Contract shall be for a twelve (12) month period commencing from the official date on the Notice to Proceed. The Contract may be extended for up to one (1) or two (2) additional twelve (12) month periods, or any portion thereof, if mutually agreed upon in writing prior to Contract expiration. Provided, however, the Contract price for the extended period shall remain the same or lower than the initial Contract price, subject to any price increase allowed by the Contract.

5.06 OFFICIAL CONTACT PERSON

The official contact person for all communication regarding the RFP is:

David Sikkink
Department of Business, Economic Development, and Tourism
Foreign-Trade Zone No. 9
521 Ala Moana Boulevard, Suite 101
Honolulu, Hawaii 96813
Telephone: (808) 586-2510
Fax: (808) 586-2513
Email: bids@ftz9.org

5.07 OVERVIEW OF THE RFP PROCESS

1. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS Section 103D-303.
2. The procurement process begins with the issuance of the RFP and the formal response to any written questions or inquiries regarding the RFP. Changes to the RFP will be made only by Addendum.
3. Proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more procurement officials. The register of proposals and Offerors' proposals shall be opened to public inspection after posting of the award.

All proposals and other material submitted by the Offerors become the property of the State and returned only at the State's option.

4. The Procurement Officer, or an evaluation committee selected by the Procurement Officer, shall evaluate the proposals in accordance with the evaluation criteria. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.
5. Proposals may be accepted on evaluation without discussion. However, if deemed necessary, prior to entering into discussion, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the Best and Final Offer (BAFO) is tendered.
6. If during discussion there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors who submit acceptable or potentially acceptable proposals.

7. Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The Procurement Officer or an evaluation committee reserves the right to have additional rounds of discussions with the Priority Listed Offerors prior to the submission of the BAFO.
8. The date and time of the Offerors to submit their BAFO, if any, is indicated in Section 1.03 RFP Schedule and Significant Dates. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.
9. After receipt and evaluation of the BAFOs in accordance with the evaluation criteria, in Section Four, the Procurement Officer or an evaluation committee will make its recommendation. The Procurement Officer will award the Contract to the Offeror whose proposal is determined to be the most advantageous to the STATE taking into consideration price and the evaluation factors set forth in the evaluation criteria.
10. The contents of any proposal shall not be disclosed during the review, evaluation, discussion, or negotiation process. Once award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the STATE agree are confidential and/or proprietary should be identified by the Offerors and shall be excluded from access.
11. The Procurement Officer or an evaluation committee reserves the right to determine what is in the best interest of the STATE for purposes of reviewing and evaluating proposals submitted in response to the RFP. The Procurement Officer or an evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.
12. The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the Contract. All proposals shall become the property of the State of Hawaii.

5.08 CONFIDENTIAL INFORMATION

If a person believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld as confidential, then the Procurement Officer named on the cover of this RFP should be so advised in writing and provided with justification to support the confidentiality claim. Price is not considered confidential and will not be withheld.

An Offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data considered confidential. Such data shall accompany the proposal, be clearly marked and shall be readily separable from the proposal in

order to facilitate eventual public inspection of the non-confidential portion of the proposal.

Pursuant to HAR Section 3-122-58, the head of the purchasing agency or designee shall consult with the Attorney General and make a written determination in accordance with HRS Chapter 92F. If the request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with HRS Section 92F-42(12).

5.09 REQUIRED REVIEW

Offeror shall carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter **must be made in writing and should be received by Foreign-Trade Zone No. 9, 521 Ala Moana Boulevard, Suite 101, Honolulu, Hawaii, 96813 prior to the deadline for written questions as stated in RFP Schedule and Significant Dates, and Official Contact Person.** This will allow issuance of any necessary corrections to the RFP. It will also help prevent the opening of a possible defective solicitation and unnecessary exposure of Offeror's proposal when award could not be made. Any exceptions taken to the terms, conditions, specifications, or other requirements listed herein, must be listed in the Exceptions section of the Offeror's proposal, if the exception is unresolved by the Proposal Due date.

5.10 QUESTIONS PRIOR TO OPENING PROPOSALS

All questions must be submitted in writing and directed to David Sikkink, Business Manager, fax (808) 586-2513 or email: bids@ftz9.org. The State will respond to written questions by the date indicated in the RFP Schedule and Significant Dates, or as amended.

5.11 OFFER ACCEPTANCE PERIOD

The State's acceptance of offer, if any, will be made within sixty (60) calendar days after the opening of the proposals. Price quotes by the Offeror shall remain firm for the sixty (60) day period.

5.12 PROPOSAL AS PART OF THE CONTRACT

Part or all of this RFP and the successful proposal may be incorporated into the Contract.

5.13 PROTEST

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that protest

based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the Contract.

The notice of award, if any, resulting from this solicitation shall be posted on the Procurement Reporting System, which is available on the State Procurement Office website: <http://www.hawaii.gov/spo2/source/>.

Any protest pursuant to §103D-701, HRS, and Section 3-126-3, HAR, shall be submitted in writing to the Department of Business, Economic Development, and Tourism Foreign-Trade Zone No. 9, 521 Ala Moana Boulevard, Suite 101, Honolulu, Hawaii 96813.

5.14 GOVERNING LAW; COST OF LITIGATION

The validity of the Contract and any of its terms or provisions, as well as the rights and duties of the parties to the Contract, shall be governed by the laws of the State of Hawaii. Any action at law or equity to enforce or interpret the provisions of the Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with the Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fee.

5.15 SUBMISSION OF PROPOSAL

The submission of a proposal shall constitute an incontrovertible representation by the Offeror of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

Before submitting a proposal, each Offeror must:

1. Examine the solicitation documents thoroughly. Solicitation documents include this RFP, and attachments, plans referred to herein, and any other relevant documents.
2. Become familiar with State, local, and federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work.

The Foreign-Trade Zone Business Office must receive sealed proposals no later than the date and time indicated in Section 1.03, RFP Schedule and Significant Dates. Timely receipt of proposals shall be evidenced by the date and time registered by the Foreign-Trade Zone Business Office time clock

stamp. Offers received after the deadline shall be returned unopened. The Foreign-Trade Zone Business Office time clock shall serve as the official time.

5.16 PROPOSAL PREPARATION

1. **Offer Form, page OF-1.** See Attachment 1. Proposals shall be submitted using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and shall indicate its exact legal name in the appropriate space on Offer Form OF-1. Failure to do so may delay proper execution of the Contract.

The authorized signature on the first page of the Offer Form shall be an original signature; if possible blue ink is preferred. If unsigned or the affixed signature is a facsimile or a photocopy, the offer shall automatically be rejected unless accompanied by other material, containing an original signature, indicating the Offeror's intent to be bound.

2. **Offer Guaranty.** An offer guaranty is NOT required for this RFP.
3. **Tax Liability.** Work performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Vendors are advised that they are liable for the Hawaii General Excise Tax (GET) and the applicable use tax. If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.
4. **Original Proposal and Copies to be Submitted.** Offeror shall submit one (1) original proposal marked "ORIGINAL" and four (4) **copies** of the original marked "COPY." It is imperative to note that the Offeror submit only one original and the required number of copies. **DO NOT SUBMIT MORE THAN ONE ORIGINAL.** The original proposal and four copies of the proposal must be in a sealed envelope or box.

The outside cover of the package containing the offer should be marked:

SEALED PROPOSAL FOR DBEDT SUBMITTED IN RESPONSE TO:

RFP-FTZ2010-02
DBEDT, State of Hawaii
Foreign-Trade Zone No. 9
521 Ala Moana Boulevard, Suite 101
Honolulu, Hawaii 96813

(Name, address, telephone number of Offeror)

Costs for developing the Proposal are solely the responsibility of the Offeror, whether or not any award results from this solicitation. The State of Hawaii will not reimburse such costs. Offeror is cautioned that illegible offers of any item(s) may be automatically rejected to avoid any errors in interpretation by the reviewers during the evaluation process.

5. All proposals become the property of the State of Hawaii.
6. Copies of all documents transmitted by Offerors via facsimile machines shall be limited to the modifications or withdrawal of an offer pursuant to HAR Sections 3-122-108 and 3-122-28, respectively.

5.17 PRICING

Pricing shall be an all-inclusive fixed cost. These prices shall be inclusive of all federal, state and local taxes; and any and all expenses, required for the completion of the services to be performed as listed under Section 2.04, Scope of Work. **No other costs will be honored.**

5.18 PROPOSAL OPENING

Offeror proposals shall not be opened publicly, but shall be opened in the presence of two or more procurement officials. The register of proposals and Offerors' proposals shall be open to public inspection upon posting of the award. All proposals and other material submitted by Offerors become the property of the STATE and may be returned only at the STATE's option.

5.19 EVALUATION OF PROPOSALS

The Procurement Officer, or an evaluation committee of at least three (3) State employees selected by the Procurement Officer shall evaluate the proposals. The evaluation will be based solely on the evaluation criteria set out in Evaluation Criteria of this RFP.

Proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.

Discussions may be conducted with priority-listed Offerors who submit proposals determined to be acceptable or potentially acceptable of being selected for award, but proposals may be accepted without discussions. The objective of these discussions is to clarify issues regarding the Offeror's proposals before the best and final offer, if necessary.

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may rank the proposals and limit the priority list to three responsive, responsible offerors who submitted the highest-ranked proposals.

5.20 DISCUSSION WITH PRIORITY LISTED OFFERORS

Priority listed Offerors shall have a discussion with the evaluation committee to discuss their proposal to ensure thorough, mutual understanding. The STATE in its sole discretion shall schedule the time and location for these discussions.

5.21 CANCELLATION OF RFP AND PROPOSAL REJECTION

The STATE reserves the right to cancel this RFP and to reject any and all proposals in whole or in part when it is determined to be in the best interest of the STATE, pursuant to HAR Sections 3-122-95 through 3-122-97.

The STATE shall not be liable for any costs, expenses, loss of profits or damages whatsoever, incurred by the Offeror in the event this RFP is cancelled or a proposal is reject.

5.22 DEBRIEFING

Pursuant to Section 3-122-60, HAR, a debriefing is provided, if requested, to the non-selected Offerors to inform them of the basis for the source selection decision and Contract award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the Contract. The procurement officer or designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of the written request.

A protest by the requestor submitted pursuant to §103D-701 HRS, following a debriefing shall be filed within five (5) working days, as specific in §103D-303 (h), HRS.

5.23 DISQUALIFICATIONS OF PROPOSALS

The STATE reserves the right to consider as acceptable only those proposals submitted in accordance with all the requirements set forth in this RFP and which demonstrate an understanding of the scope of services. Any proposal offering any other set of terms and conditions contradictory of those included in the RFP may be disqualified without further notice.

5.24 CONTRACT EXECUTION

Successful Offeror receiving award shall enter into a formal written Contract. No performance or payment bond shall be required for the Contract.

No work is to be undertaken by the CONTRACTOR prior to the commencement date specified in the Notice to Proceed issued by the STATE upon execution of the Contract

by both parties. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to the official commencement date.

If an option to extend is mutually agreed upon, the CONTRACTOR shall be required to execute a supplemental to the Contract for the additional extension period.

5.25 PAYMENT

Section 103D-10, HRS, provides that the STATE shall have thirty (30) calendar days from receipt of invoice or satisfactory delivery of goods or performance to make payment. For this reason, the STATE will reject any proposal submitted with a condition requiring payment within a shorter period. Further, the STATE will reject any proposal submitted with a condition requiring interest payments greater than that allowed by HRS Section 103-10, as amended.

The STATE will not recognize any requirement established by the CONTRACTOR and communicated to the STATE after award of the Contract, which requires payment within a shorter period or interest payment not in conformance with statute.

5.26 AWARD OF CONTRACT

The award will be made to the responsive, responsible Offeror whose proposal is determined to be the most advantageous to the STATE based on the evaluation criteria. Award of a Contract shall be contingent on the availability of funds.

If compliance documents have not been submitted to DBEDT/Foreign-Trade Zone No. 9 Business Office prior to award, the successful Offeror shall produce documents to the procurement officer to demonstrate compliance with section 5.02, Responsibility of Offerors.

5.27 NOTICE TO PROCEED

Work will commence on the official commencement date specified in the Notice to Proceed.

5.28 INVOICING

CONTRACTOR shall submit an invoice with each request for payment. An original and three (3) copies of the invoice shall be submitted to:

Hawaii Foreign-Trade Zone No. 9
521 Ala Moana, Suite 101
Honolulu, Hawaii 96813

Invoices should reference the Contract number.

5.29 SUBCONTRACTING

No work or services shall be subcontracted or assigned without the prior written approval of the STATE. No subcontract shall under any circumstances, relieve the CONTRACTOR of his/her obligations and liability under the Contract with the STATE. All persons engaged in performing the work covered by the Contract shall be considered employees of the CONTRACTOR.

5.30 NON-DISCRIMINATION

The CONTRACTOR shall comply with all applicable federal and State laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the CONTRACTOR or in participation in the benefits of any program or activity funded in whole or in part by the STATE.

5.31 CONFLICTS OF INTEREST

The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance of the Contract.

5.32 WAIVER

The failure of the STATE to insist upon the strict compliance with any term, provision or condition of the Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE's right to enforce the same in accordance with the Contract.

5.33 SEVERABILITY

In the event that any provision of the Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of the Contract.

5.34 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

It has been determined that funds for this Contract have been appropriated by a legislative body.

Therefore, Offeror, if awarded a Contract in response to this solicitation, agrees to comply with HRS Section 11-205.5, which states that campaign contributions are prohibited from a State and county government contractor during the term of the Contract if the CONTRACTOR is paid with funds appropriated by a legislative body.

5.35 LIABILITY INSURANCE

The CONTRACTOR shall maintain in full force and effect during the life of the Contract, liability and property damage insurance to protect the CONTRACTOR and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under the Contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the Contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the CONTRACTOR providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, CONTRACTOR may require subcontractor to provide its own insurance, which meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the CONTRACTOR's own policy or policies.

The following minimum insurance coverage (2) and limit(s) shall be provided by the CONTRACTOR, including its subcontractor(s) where appropriate.

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability	\$1,000,000 limit per occurrence for bodily injury and property damage / \$2,000,000 in the aggregate
Automobile Liability	\$1,000,000 each accident

Each insurance policy required by the Contract, including a subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Foreign-Trade Zone Business Office, 521 Ala Moana Boulevard, Suite 101, Honolulu, Hawaii 96813."
2. "The State of Hawaii is added as an additional insured as respect to operations performed for the State of Hawaii."
3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the Contract, including supplemental agreements.

Upon CONTRACTOR's execution of the Contract, the CONTRACTOR agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the STATE that the insurance provisions of the Contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the STATE during the entire term of the Contract, including those of its subcontractor(s), where appropriate. Upon request by the STATE, CONTRACTOR shall be responsible for furnishing a copy of the policy or policies.

Failure of the CONTRACTOR to provide and keep in force such insurance shall be regarded as material default under the Contract, entitling the STATE to exercise any or all of the remedies provided in the Contract for a default of the CONTRACTOR.

The procuring of such required insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of the Contract. Notwithstanding said policy or policies of insurance, CONTRACTOR shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with the Contract.

SECTION SIX PROPOSAL

6.01 TRANSMITTAL LETTER

Department of Business, Economic Development and Tourism
Foreign-Trade Zone
Business Office
521 Ala Moana Boulevard, Suite 101
Honolulu, HI 96813

The undersigned has carefully read and understands the terms, conditions and requirements specified in the Request for Proposal attached hereto and hereby submit the following proposal to perform the work specified herein, all in accordance with the true intent and meaning thereof.

The undersigned further understands and agrees to the following:

- That by submitting this proposal, the undersigned is declaring that this proposal is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts;
- That by submitting this proposal, the undersigned is declaring that the proposal is being made without collusion with any other person, firm or corporation;
- That the Director of the Department of Business, Economic Development, and Tourism reserves the right to cancel the Request for Proposal at any time and all proposals may be rejected in whole or in part when it is in the best interest of the State;
- That discussions may be conducted with Offerors who submit proposals determined to be reasonably susceptible of being selected for award, but a proposal may be accepted without such discussions;
- That the undersigned may be required to submit best and final offers based on discussion;
- That award, if any, will be made on a firm fixed fee basis to the responsive and responsible offeror who has submitted the most advantageous offer in accordance with the evaluation criteria set forth in this Request for Proposal;
- That by submitting this proposal, the undersigned is declaring that if awarded a Contract, the undersigned will comply with all requirements for wages, hours and working conditions in accordance with Section 103-55, Hawaii Revised Statutes; and
- That if awarded a Contract, the undersigned hereby commits to a minimum of two consultation sessions with the State.

The undersigned acknowledges receipt of any addendum issued by the Department of Business, Economic Development, and Tourism by recording in the space below the **date** of receipt:

Addendum No. 1 _____

Addendum No. 2 _____

Addendum No. 3 _____

Addendum No. 4 _____

The undersigned hereby certifies that the proposal hereby attached has been carefully checked and is submitted as correct.

Respectfully submitted,

Exact Legal Name of Offeror (company name)

Authorized signature (attach corporate resolution or evidence of authorization to bind)

Title

Date

Street Address

City, STATE, Zip Code

Telephone No.

Mailing Address (if different from street address)

6.02 OFFEROR'S LEGAL LICENSE AND IDENTIFICATION NUMBERS

State of Hawaii General Excise Tax (GET) License Number: _____

Federal Taxpayer Identification Number: _____

Type of Organization:

☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture

If offeror is a "dba" or a division of a corporation, furnish the exact legal name of the corporation under which the Contract, if awarded, will be executed:

State of Incorporation: ☐ Hawaii Other: _____

6.03 PREFERENCES:

The following preferences apply to this solicitation. A detailed discussion of each preference is included in the section entitled, "Special Provisions." Indicate which preferences apply.

1. In-state contractor preference: ☐ Yes ☐ No

If yes, indicate State of Hawaii business street address: _____

If yes, attach current (issued within 45 days of bid submittal) tax clearance from the State of Hawaii Department of Taxation.

(Note: The bidder may wish to also obtain tax clearance from the Internal Revenue Service at the same time in order to fulfill this requirement if awarded a Contract.)

2. Tax Adjustments:

Are you an out-of-state business?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is your organization tax exempt?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

3. Reciprocal Preferences:

List your principal place of Business:

Street address, City, State, Zip Code

Are you registered with the State of Hawaii, Department of Commerce and Consumer Affairs to do business in the State of Hawaii? ☐ Yes ☐ No

6.04 QUALIFICATION QUESTIONNAIRE

1. How many years has your organization been in business under your present business name?

2. How many years experience in this field of work has your organization had? _____
3. Show what projects your organization has completed in the past five (5) years that are related to this project:

Name and Address of Project Owner	Description	Contract Amount	Completion Date

4. Have you ever failed to complete any work awarded to you? _____
If so, please provide a brief description, including when and where it took place and why work was not completed.

5. Has any officer or partner of your organization in the past five (5) years been an officer, partner or individual of some other organization that failed to complete a Contract? _____
If so, state name of individual, other organization and reason therefore:

6. For what entities within the State of Hawaii other than government agencies have you performed work and to whom do you refer?

Agency	Project Description	Contact Person	Phone

7. For what State departments and county agencies of the State of Hawaii have you performed work and to whom do you refer?

Department	Project Description	Contact Person	Phone

8. Have you performed work for the U.S. Government? _____
If so, list and to whom do you refer?

Agency	Project Description	Contact Person	Phone

9. Have you ever performed any work for any other governmental agencies outside the State of Hawaii? _____
If so, list and to whom do you refer?

Agency	Project Description	Contact Person	Phone

10. List a minimum of three references for work performed similar to this project.

Company	Project Description	Contact Person	Phone

11. What is the professional or project experience of the principal individuals being assigned to this project?

Individual's Name	Position or Title	Years Experience	Type of Work

6.05 CORPORATE RESOLUTION

Attach here:

Corporate resolution or written authorization of offeror's representative to sign this proposal.

SECTION SEVEN

ATTACHMENTS

ATTACHMENT 1: OFFER FORM, OF-1

ATTACHMENT 2: OFFER FORM, OF-2

ATTACHMENT 3: CERTIFICATE FOR FINAL PAYMENT (SPO FORM-22)

ATTACHMENT 4: GENERAL CONDITIONS

Attachment 1
OFFER FORM-OF-1

Department of Business, Economic Development, and Tourism
Foreign-Trade Zone Division
521 Ala Moana Boulevard, Suite 101
Honolulu, Hawaii 96813

Dear Mr. David Sikkink:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions, Form 4/15/09, by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned represents that it is: **(Check ☒ one only)**

- ☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**
☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, is or shall be registered at the State of Hawaii, Department of Commerce and Consumer Affairs Business Registration Division (DCCA-BREG) to do business in the State of Hawaii.
State of incorporation: _____

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture ☐ Other _____

Federal I.D. No.: _____

Hawaii General Excise Tax License I.D. No.: _____

Payment address (other than street address below): _____

City, State, Zip Code: _____

Business address (street address): _____

City, State, Zip Code: _____

Respectfully submitted:

(x) _____

Authorized (Original) Signature

Date: _____

Telephone No.: _____

Name and Title (Please Type or Print)

Fax No.: _____

* _____
Exact Legal Name of Company (Offeror)

E-mail Address: _____

*If Offeror is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded Contract will be executed:

OFFER FORM

OF-1

Revised 12/27/04

Attachment 2
OFFER FORM-OF-2

**TOTAL ANNUAL CONTRACT COST
NETWORK AND DESKTOP SUPPORT
SERVICES:**

(Use worksheet below)

\$ _____

**Hourly Rate used for developing the annual
cost:**

\$ _____

Cost Worksheet:

Annual Desktop/Laptop system hardware maintenance
support:

\$ _____

Annual Desktop/Laptop software support:

\$ _____

Annual Network system hardware maintenance support:

\$ _____

Annual Network system software maintenance support:

\$ _____

Annual Network system monitoring support:

\$ _____

Annual Security system connectivity monitoring support:

\$ _____

Annual cost for other related maintenance support:

\$ _____

Note: Pricing shall include labor, materials, supplies, all applicable taxes, and any other costs incurred to provide the specified services.

Offeror _____
Company Name

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM
FOREIGN-TRADE ZONE NO. 9

NETWORK AND DESKTOP SYSTEM SUPPORT

SOLICITATION No. RFP-FTZ2010-02

ATTACHMENT 3 – CERTIFICATE FOR FINAL PAYMENT (SPO FORM 22)

Reference: _____
(Contract Number) _____
(IFB/RFP Number)

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker's Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

Moreover, _____
(Company Name)
acknowledges that making a false statement shall cause its suspension and may cause its
debarment from future awards of contracts.

Date: _____

STATE OF HAWAII
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM
FOREIGN-TRADE ZONE NO. 9

NETWORK AND DESKTOP SYSTEM SUPPORT

SOLICITATION No. RFP-FTZ2010-02

ATTACHMENT 4 – GENERAL CONDITIONS

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
- (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.